IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/07/2004

Coram:

The Hon'ble Mr. Justice M.KARPAGAVINAYAGAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

Criminal Appeal No.313 of 2001

Albert Collins ... Appellant

-VS-

State by Inspector of Police,
P-7, Ramanathapuram Police Station,
(L & O), Coimbatore. ... Respondent

Appeal against the Judgment of the Principal Sessions Judge,
Coimbatore, made in S.C.No.46 of 1999 on 25.08.2000.

!For Appellant : Mr.S.Govindarajan

^For Respondent : Mr.E.Raja,
Addl. Public Prosecutor.

:JUDGMENT

(Judgment of the Court was delivered
by M.KARPAGAVINAYAGAM, J.)

Claiming insanity at the time of commission of offence of murdering a child of five years, by invoking Section 84 IPC, the accused had tried his level best to convince the trial court to hold him not guilty under Section 302 IPC. Having failed in his attempt, he has filed this Appeal, challenging the conviction imposed by the trial court under Section 302 IPC.

2. The Prosecution case, in brief, leading to the conviction of the accused, is as follows:-

a. The deceased Jemi is the daughter of PW-1 Gnanamani and his wife Meerabai. The accused Albert Collins is the brother of Meerabai. PW-1 and Meerabai were residing along with their twin children including the deceased Jemi. Their neighbouring house was occupied by the accused and his another sister PW-2 Violet Pushpam. The accused was suffering from mental illness, for which, he was taking treatment from Kilpauk Mental Hospital as well as

from the Mental Hospital at Coimbatore. The accused underwent treatment and after obtaining a certificate to the effect that he was alright, he re-joined the company in which he was working on 2.11.1998. The accused used to beat the children of PW-1. Therefore, PW-1 used to scold him.

b. On 18.11.1998, PW-1 went to the School in the evening and brought Jemi and left her in the neighbouring house occupied by PW-2 Violet Pushpam. The other child was with PW-1's wife Meerabai, who was working in a school. When the child Jemi was left in the house of PW-2 Violet Pushpam, the accused was available as he had returned by that time from his office. PW-1 went back to his office to attend his work.

c. It was at about 7 P.M., PW-2 left the house leaving the child Jemi, who was sleeping at that time, and went to the shop for getting Idlis. When she returned, she saw the accused coming out from the house with an agitated mood. PW-2 went inside the house and found the deceased child lying down in a pool of blood. The accused, who came out of the house, informed his neighbour PW-3 Williams that he took a "Kuzhavi Kal" (grinder stone) and dropped it on the head of the deceased. Then, he ran away from the scene.

d. With the help of PW-3 Williams and another, PW-2 took the deceased to K.G. Hospital, Coimbatore. The child was admitted at 8.25 P.M.. Ex.P-16 is the Accident Register. The deceased died at 2.50 A.M. on 19.11.1998 and the Death Intimation is Ex.P-17. In the meantime, on getting information from PW-4 Arumugham, who accompanied PW-2 to the Hospital, about the admission of the child, PW-1 went to the Hospital. On coming to know that the deceased was declared dead, he enquired PW-3 Williams. PW-3 informed PW-1 about the statement made by the accused.

e. Then PW-1 went to the Police Station and gave a complaint (Ex.P-1) to PW-12, the Sub Inspector of Police. A case was registered under Section 302 IPC. at 6 A.M. on 19.11.1998. The documents prepared were sent to the Magistrate as well as to the superior officers.

f. PW-15, the Inspector of Police, took up investigation, went to the scene of occurrence and prepared observation mahazar Ex.P-2 and rough sketch Ex.P-19 in the presence of PW-5 Karunanidhi and one Balasubramanian. He also recovered MO-1 bloodstained straw mat, MO-2 bloodstained bed-sheet, MO-3 bloodstained jacket, MO-4 grinder stone, MO-5 bloodstained cement plaster, MO-6 sample cement plaster and MO-7 bloodstained saree from the scene of occurrence under Ex.P-3 mahazar in the presence of witnesses. He conducted inquest over the body of the deceased in the presence of panchayatdars and Ex.P-20 is the inquest report. Then, he sent the body to the Coimbatore Government College Hospital through PW-11 Constable Manoharan with the requisition Ex.P-14 to conduct post-mortem on the body of the deceased.

g. PW-14 Dr.Karthikeyan, on receipt of the requisition from the Inspector of Police, conducted the post-mortem and found as many as eight injuries. He gave his opinion in Ex.P-18 post-mortem certificate that the deceased would appear to have died of cranio cerebral injuries.

h. On 20.11.1998 at about 11 A.M., PW-15 arrested the accused and on his confession, MO-8 bloodstained shirt and MO-9 bloodstained lungi were recovered. PW-16, the successor of PW-15, took up further investigation. While continuing the investigation, he sent a requisition to the Judicial Magistrate PW-8 to record the judicial confession of the accused. On 1.12.1998, the judicial confession of the accused was recorded under Ex.P-7 by the the Judicial Magistrate.

i. PW-16 recovered the Attendance Register under Form-95 from PW-7 Engineer, which would show that the accused attended the office from 2 .11.1998 to 18.11.1998. After completion of the investigation, charge sheet was filed against the accused under Section 302 IPC.

3. During the course of trial, PWs-1 to 16 were examined, Exs.P-1 to P-21 were filed and MOs-1 to 9 were marked.

4. When the accused was questioned under Section 313 Cr.P.C., he pleaded that a false case had been foisted against him. On the side of the defence, DW-1 Jailor was examined.

5. Assessing the evidence adduced by both the parties, the trial court found the accused guilty under Section 302 IPC. and convicted him thereunder. Hence, this Appeal.

6. Mr.S.Govindarajan, learned counsel appearing for the appellant, would make a plea that the appellant is liable to be acquitted since his case squarely comes under Section 84 IPC., which forms part of Chapter-IV, dealing with general exceptions. According to him, the evidence of PW-9 and DW-1 and also the admission of other witnesses would indicate that the accused was suffering from unsoundness of mind and as such, the act committed by him on the date of occurrence, i.e., on 18.11.1998, causing injuries on the child, was without knowledge and intention and out of unsoundness of mind and hence, he is liable to be acquitted.

7. Refuting the said submission, the learned Additional Public Prosecutor, on the strength of the decision reported in 2002 SCC (Cri) 103 (T.N.Lakshmaiah v. State of Karnataka), would contend that once there is a plea under Section 84 IPC., it is only for the accused to prove the same. On the other hand, the prosecution has clearly proved that the accused, with full knowledge and intention, caused the injury on the head of the deceased, who died later in the hospital. Therefore, the conviction imposed on the accused is perfectly justified and has to be confirmed.

8. We have carefully considered the submissions made by the learned counsel for the appellant and also the learned Additional Public Prosecutor.

9. There is no eye witness in this case. The evidence available are these:-

(i) PW-2 Violet Pushpam, the sister of the accused, went out of her house for purchasing idlis and when she came back to the house, she saw the accused coming out with an agitated mood and when she went inside, she found

the child lying down in a pool of blood;

(ii) The accused, after coming out from the house in an agitated mood, met PW-3 Williams, who came to the house of PW-2 on hearing of a crying noise, and informed that he removed the "Kuzhavi Kal" (grinder stone) and threw it on the head of the deceased. Thereafter, he ran away from the scene.

(iii) The accused was arrested by PW-15 on 20.11.1998 and on his confession, the bloodstained shirt as well as lungi were recovered, which were found to contain human blood.
(iv) After arrest, the accused was produced before PW-8, the Judicial Magistrate, before whom, on 1.12.1998, he gave the judicial confession Ex.P-7 to the effect that he only committed the act, causing injury on the deceased out of anger.

9-A. If these materials are accepted to be true, there is no difficulty in holding the accused guilty under Section 302 IPC. But, the plea made by the learned counsel for the appellant is that he comes under the exception as incorporated in Section 84 IPC. and as such, he is liable to be acquitted. According to him, both PW-1 and PW-2 viz., the brother-in-law and sister of the accused respectively, would claim that the accused was taking treatment due to his mental illness prior to the occurrence. Learned counsel would also point out from the evidence of PW-9 as well as DW-1, the Jailor, who would depose that subsequent to the arrest of the accused, treatment was given by PW-9 for his m ental illness. PW-9 issued Ex.P-8 Certificate about the mental condition of the accused. According to the learned counsel for the appellant, those things would be sufficient to hold that the appellant was suffering from mental illness, namely, schizophrenia as contained in Ex.P-8 and as such, the accused is liable to be acquitted under Section 84 IPC.

10. This contention, in our view, does not deserve acceptance. There is no dispute in the legal position as laid down by the Supreme Court in 2002 SCC (Cri) 103 (Cited supra), which is as follows:-

" Section 84 IPC forms part of Chapter IV dealing with general exceptions. ..... Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Mere ipse dixit of the accused is not enough for availing of the benefit of the exceptions under Chapter IV. Under the Evidence Act, the onus of proving any of the exceptions mentioned in the Chapter lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of which he may succeed not because that he proves his case to the hilt but because the version given by him casts a doubt on the prosecution case. The burden of proof that the mental conditions of the accused was, at the crucial point of time, such as is described by Section 84, lies on the accused who claims the benefit of this exemption vide Section 105 of the Evidence Act"

11. In the light of the above observation, it is clear that where the

exception under Section 84 IPC is claimed by an accused, the Court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. The entire conduct of the accused, from the time of the commission of the offence up to the time of the commencement of the trial proceedings before the court is relevant for the purpose of ascertaining as to whether the plea raised is genuine, bona fide or an afterthought.

12. As propounded by the Supreme Court, the basic ingredient under Section-84 IPC. is that the mental illness with regard to unsoundness of mind at the time of doing that act or knowledge or incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law has to established. It means, it is for the accused to prove that at the time of commission of the offence, the act was committed by the accused by reason of his unsoundness of mind or at the time of committing the act, he was incapable of knowing the nature of the act or he was doing that act without the knowledge that it is either wrong or contrary to law. As admitted by the learned counsel for the appellant/accused, there is no dispute that it has to be established by the accused alone.

13. As per Section 105 of the Evidence Act, the evidentiary burden shifts on the accused when the accused comes within the Exceptions as contained in Chapter IV. Section 105 provides that when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code is upon him and the Court shall presume the absence of such circumstances. So, the Exception as provided under Section 84 in Chapter IV has to be established by the accused and the accused alone.

14. While not disputing the law, the learned counsel for the appellant would strenuously contend that the evidence of the Doctor PW-9 and the Jailor DW-1, who was working as the Deputy Prison Officer when the accused was detained after the commission of the offence, while he was in judicial custody, would indicate that the accused was taking treatment for his unsoundness of mind.

15. The records available would indicate that the accused was suffering from mental ailment from May 1998 and that he was treated in the Kilpauk Mental Hospital, Chennai and also in the Mental Hospital at Coimbatore from May to October, 1998. As a matter of fact, the accused obtained a certificate to the effect that he was fit enough to attend his daily duty. Only on the basis of the said certificate, PW-7 , the Engineer allowed him to attend the duty from 2.11.1998. Ex.P-6 , the Attendance Register produced by PW-7 would show that he attended duty from 2.11.1998 up to 18.11.1998 and subsequently, he was absent. The evidence of PW-7 would indicate that he was alright on those days. Though PW-1 and PW-2 would admit that the accused was taking treatment for some period, they would specifically state that he became alright after he was discharged from the Hospital. They also admitted that the accused was attending the office from 2.11.1998 till 18 .11.1998. According to them, they were under the impression that he became alright.

PW-1 would state that the accused used to beat his children for which act, he would scold the accused in retaliation. PW-1 left the child in the house of PW-2 even though he knew that the accused was also available at that time, hoping that the child would not be harmed in any way by the accused as he knew that the accused became alright. Similarly, PW-2, who earlier admitted her brother viz., the accused, to take treatment for mental illness, felt that he was alright since he was regularly attending the office from 2.11.1998 and therefore, she allowed the deceased to sleep in the cradle even though the

accused was available in the house, as she was going to the shop for getting idlis. These events would indicate that they were with hope that the accused became alright.

16. However, the important incriminating evidence available against the accused is that when PW-2 came back home, she saw him coming out in an agitated mood and when she went inside, she found the deceased lying in a pool of blood with injury on hea A grinder stone was also seen nearby. She cried on seeing the child. On hearing the noise, PW-3 Williams, a neighbour, came running towards the house of PW-2. At that time, he saw the accused coming out from the house of PW-2 in an anxiety mood and asked him as to what happened. The accused confessed to him that he removed a "Kuzhavi Kal" (Grinder stone) and dropped it on the head of the deceased. So saying, the accused ran away from the scene. Immediately the child was taken to the Hospital. In the Hospital also, it was informed to the Doctor concerned that the deceased was hit with a grinder-stone by the uncle of the deceased, who was suspected to be suffering from schizophrenia. In the early morning of 19.11.1998, the child died and this was informed to PW-1, the father of the child. Before PW-1 going to the Police Station, PW-3 informed PW-1 about the act of the accused in having caused injuries on the deceased. This has been mentioned in Ex.P-1. PW-1's evidence is in consonance with Ex.P-1, which was registered at 6 A.M. on 19.11.1998. PW-3 would state that only on his passing on the information about the statement of the accused, PW-1 came to know of the facts and on that basis, he gave the complaint. Thus, the evidence of PWs-1 to 3 would clearly indicate that it is only because of the act of the accused, the deceased sustained the injuries which ultimately resulted in her death, as per the opinion of PW-14, the Post Mortem Doctor.

17. Now, a question would arise as to whether the act has been committed out of insanity, as claimed by the accused, under Section 84 IPC.

18. As stated above, it is for the accused to establish the same. The accused in his statement under Section 313 Cr.P.C., would state that a false case had been foisted against him and he thought it fit to examine DW-1, the Jailor, who states that the accused was treated for his mental illness by the Doctors concerned in the Mental Hospital at Coimbatore. PW-9, the Doctor at Coimbatore Government Hospital would state that he examined and issued Ex.P-8 certificate for the treatment given to the accused when he was sent to the hospital as per the orders of the Court. Thus, it is clear that the evidence adduced would clearly reveal that treatment has been given by the Doctor PW-9 at the Mental Hospital only after the occurrence was over.

19. It is true that PWs-1 and 2 would admit that a similar treatment was given to the accused prior to 1.11.1998 both at Kilpauk Mental Hospital, Chennai and at Coimbatore Mental Hospital. But, the accused did not choose to summon the Doctors concerned who gave treatment and establish as to what type of the mental illness that he had suffered. As pointed out by the Supreme Court, it is for the accused to establish that he was suffering from unsoundness of mind at the time of committing the act. Though there is some evidence to show that he was taking treatment for mental illness prior to 1.11.1998 and after 2 2.11.1998, there is no material available to indicate that between 2.11.1998 and 22.11.1998, he was suffering from unsoundness of mind. Of course, it is true that PW-9, the Doctor would say that he found the accused suffering from schizophrenia. But, there is no dispute in the fact that legal insanity is entirely different from medical insanity. Even assuming that the evidence of PW-9 is taken that he was suffering from medical insanity, it should be taken note of that the medical insanity he suffered was only subsequent to the occurrence. Thus, it is clear that the accused failed to produce any document to show that he was suffering from insanity, much less legal insanity on the date of occurrence, i.e., on 18.11.1998.

20. On the other hand, the evidence of PW-2, PW-3 and PW-8, the Judicial Magistrate would show that the accused knew the consequences even at the time of committing the act and that the act was committed with his full knowledge. According to PW-2, when the accused came out of the house, he was found to be in an agitated mood. According to PW-3, when the accused was coming out of the house, he asked him as to why he was coming out in an anxiety mood, for which, he told PW-3 that he removed the "Kuzhavi Kal" (Grinder stone) and dropped it on the head of the deceased and so saying, he ran away. PW-8, the Judicial Magistrate would say that the accused was produced before him on three occasions and he was found alright and that was the reason why he was allowed to give confession statement on 01.12.1998. Ex.P.7, the Judicial confession of the accused, would indicate that the Judicial Magistrate expressed satisfaction over his mental fitness to give statement. Further, the statement Ex.P.7 would indicate that the accused himself would state that out of anger, he did the act. The Doctor PW-9, who examined the accused, has stated that the accused was found with guilty mind and Ex.P-8 would indicate that the accused was prepared to face any punishment. So, these things would clearly show that the act was committed by the accused with full knowledge and out of anger.

21. As deposed by PWs-1 and 2, the accused used to beat the child earlier and for that, PW-1 used to scold the accused and due to that, the accused had a grudge against the child. When the child was sleeping alone in the house, taking advantage of that, he took a stone and threw it on the head of the deceased, which ultimately, resulted in her death. We are unable to see that the act was committed due to legal insanity as provided under Section 84 IPC. Consequently, we are constrained to hold that the conviction and sentence imposed by the trial court are perfectly justified.

22. In the result, the appeal is dismissed, confirming the conviction and sentence imposed upon the appellant/accused by the trial court.

Index: yes
JI.

To

1. The Principal Sessions Judge, Coimbatore.
2. The I Additional Sessions Judge, Coimbatore.
3. The Superintendent, Central Prison, Coimbatore.
4. The Public Prosecutor, Madras.
5. The Inspector of Police, P-7, Ramanathapuram Police Station,
(L & O), Coimbatore.
6. The District Collector, Coimbatore.
7. The Superintendent of Police, Coimbatore.